

AN ACT

relating to certain information or guidelines provided by or concerning a property owners' association or concerning subdivisions that are subject to restrictive covenants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.012, Property Code, is amended by amending Subsection (a) and adding Subsections (a-1), (f), and (g) to read as follows:

(a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE PROPERTY AT (street address) (name of residential community)

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and all [a] dedicatory instruments [~~instrument~~] governing the establishment, maintenance, or [~~and~~] operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instruments [~~instrument~~] may be obtained from the county

1 clerk.

2 You are obligated to pay assessments to the property owners'
3 association. The amount of the assessments is subject to change.
4 Your failure to pay the assessments could result in enforcement of
5 the association's [a] lien on and the foreclosure of your property.

6 Section 207.003, Property Code, entitles an owner to receive
7 copies of any document that governs the establishment, maintenance,
8 or operation of a subdivision, including, but not limited to,
9 restrictions, bylaws, rules and regulations, and a resale
10 certificate from a property owners' association. A resale
11 certificate contains information including, but not limited to,
12 statements specifying the amount and frequency of regular
13 assessments and the style and cause number of lawsuits to which the
14 property owners' association is a party, other than lawsuits
15 relating to unpaid ad valorem taxes of an individual member of the
16 association. These documents must be made available to you by the
17 property owners' association or the association's agent on your
18 request.

19 Date: _____

20 _____
Signature of Purchaser

21 (a-1) The second paragraph of the notice prescribed by
22 Subsection (a) must be in bold print and underlined.

23 (f) On the purchaser's request for a resale certificate from
24 the property owners' association or the association's agent, the
25 association or its agent shall promptly deliver a copy of the most
26 recent resale certificate issued for the property under Chapter 207
27 so long as the resale certificate was prepared not earlier than the

60th day before the date the resale certificate is delivered to the purchaser and reflects any special assessments approved before and due after the resale certificate is delivered. If a resale certificate that meets the requirements of this subsection has not been issued for the property, the seller shall request the association or its agent to issue a resale certificate under Chapter 207, and the association or its agent shall promptly prepare and deliver a copy of the resale certificate to the purchaser.

(g) The purchaser shall pay the fee to the property owners' association or its agent for issuing the resale certificate unless otherwise agreed by the purchaser and seller of the property. The property owners' association may require payment before beginning the process of providing a resale certificate requested under Chapter 207 but may not process a payment for a resale certificate until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided in the time prescribed by Section 207.003(a).

SECTION 2. Subdivision (1), Section 202.001, Property Code, is amended to read as follows:

(1) "Dedictory instrument" means each document governing ~~[instrument covering]~~ the establishment, maintenance, or ~~[and]~~ operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to:

(A) restrictive covenants, bylaws, or similar

1 instruments governing the administration or operation of a property
2 owners' association;

3 (B) ~~[, or the]~~ properly adopted rules and regulations
4 of the property owners' association; or

5 (C) ~~[, or the]~~ all lawful amendments to the
6 covenants, bylaws, instruments, rules, or regulations.

7 SECTION 3. Section 202.006, Property Code, is amended to
8 read as follows:

9 Sec. 202.006. PUBLIC RECORDS. (a) A property owners'
10 association shall file all ~~[the]~~ dedicatory instruments
11 ~~[instrument]~~ in the real property records of each county in which
12 the property to which the dedicatory instruments relate ~~[instrument~~
13 ~~relates]~~ is located.

14 (b) A dedicatory instrument has no effect until the
15 instrument is filed in accordance with this section.

16 SECTION 4. Section 207.003, Property Code, is amended by
17 amending Subsections (a), (b), and (f) and adding Subsections (a-1)
18 and (c-1) to read as follows:

19 (a) Not later than the 10th business day after the date a
20 written request for subdivision information is received from an
21 owner or the ~~[r]~~ owner's agent, a purchaser of property in a
22 subdivision or the purchaser's agent, or a title insurance company
23 or its agent acting on behalf of the owner or purchaser and the
24 evidence of the requestor's authority to order a resale certificate
25 under Subsection (a-1) is received and verified, the property
26 owners' association shall deliver to the owner or the ~~[r]~~ owner's
27 agent, the purchaser or the purchaser's agent, or the title

1 insurance company or its agent:

2 (1) a current copy of the restrictions applying to the
3 subdivision;

4 (2) a current copy of the bylaws and rules of the
5 property owners' association; and

6 (3) a resale certificate prepared not earlier than the
7 60th day before the date the certificate is delivered that complies
8 with Subsection (b).

9 (a-1) For a request from a purchaser of property in a
10 subdivision or the purchaser's agent, the property owners'
11 association may require the purchaser or purchaser's agent to
12 provide to the association, before the association begins the
13 process of preparing or delivers the items listed in Subsection
14 (a), reasonable evidence that the purchaser has a contractual or
15 other right to acquire property in the subdivision.

16 (b) A resale certificate under Subsection (a) must contain:

17 (1) a statement of any right of first refusal, other
18 than a right of first refusal that is prohibited by statute, and any
19 ~~[or]~~ other restraint contained in the restrictions or restrictive
20 covenants that restricts the owner's right to transfer the owner's
21 property;

22 (2) the frequency and amount of any regular
23 assessments;

24 (3) the amount and purpose of any special assessment
25 that has been approved before and is due after ~~[the date]~~ the resale
26 certificate is delivered ~~[prepared]~~;

27 (4) the total of all amounts due and unpaid to the

1 property owners' association that are attributable to the owner's
2 property;

3 (5) capital expenditures, if any, approved by the
4 property owners' association for the property owners' association's
5 current fiscal year;

6 (6) the amount of reserves, if any, for capital
7 expenditures;

8 (7) the property owners' association's current
9 operating budget and balance sheet;

10 (8) the total of any unsatisfied judgments against the
11 property owners' association;

12 (9) the style and cause number of any pending lawsuit
13 in which the property owners' association is a party, other than a
14 lawsuit relating to unpaid ad valorem taxes of an individual member
15 of the association [~~defendant~~];

16 (10) a copy of a certificate of insurance showing the
17 property owners' association's property and liability insurance
18 relating to the common areas and common facilities;

19 (11) a description of any conditions on the owner's
20 property that the property owners' association board has actual
21 knowledge are in violation of the restrictions applying to the
22 subdivision or the bylaws or rules of the property owners'
23 association;

24 (12) a summary or copy of notices received by the
25 property owners' association from any governmental authority
26 regarding health or housing code violations existing on the
27 preparation date of the certificate relating to the owner's

1 property or any common areas or common facilities owned or leased by
2 the property owners' association;

3 (13) the amount of any administrative transfer fee
4 charged by the property owners' association for a change of
5 ownership of property in the subdivision;

6 (14) the name, mailing address, and telephone number
7 of the property owners' association's managing agent, if any; ~~and~~

8 (15) a statement indicating whether the restrictions
9 allow foreclosure of a property owners' association's lien on the
10 owner's property for failure to pay assessments; and

11 (16) a statement of all fees associated with the
12 transfer of ownership, including a description of each fee, to whom
13 each fee is paid, and the amount of each fee.

14 (c-1) The property owners' association may require payment
15 before beginning the process of providing a resale certificate but
16 may not process a payment for a resale certificate until the
17 certificate is available for delivery. The association may not
18 charge a fee if the certificate is not provided in the time
19 prescribed by Subsection (a).

20 (f) Not later than the seventh business day after the date a
21 written request for an update of ~~to~~ a resale certificate
22 delivered under Subsection (a) is received from an owner, owner's
23 agent, or title insurance company or its agent acting on behalf of
24 the owner, the property owners' association shall deliver to the
25 owner, owner's agent, or title insurance company or its agent an
26 updated resale certificate that contains the following
27 information:

1 (1) if a right of first refusal or other restraint on
2 sale is contained in the restrictions, a statement of whether the
3 property owners' association waives the restraint on sale;

4 (2) the status of any unpaid special assessments,
5 dues, or other payments attributable to the owner's property; and

6 (3) any changes to the information provided in the
7 resale certificate issued under Subsection (a).

8 SECTION 5. Chapter 207, Property Code, is amended by adding
9 Section 207.006 to read as follows:

10 Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A
11 property owners' association shall make dedicatory instruments
12 relating to the association or subdivision and filed in the county
13 deed records available on a website if the association has, or a
14 management company on behalf of the association maintains, a
15 publicly accessible website.

16 SECTION 6. Section 209.003, Property Code, is amended by
17 adding Subsection (e) to read as follows:

18 (e) Section 209.0062 does not apply to a property owners'
19 association that is a mixed-use master association that existed
20 before January 1, 1974, and that does not have the authority under a
21 dedicatory instrument or other governing document to impose fines.

22 SECTION 7. Chapter 209, Property Code, is amended by adding
23 Section 209.0062 to read as follows:

24 Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
25 ASSESSMENTS. (a) A property owners' association shall file the
26 association's alternative payment schedule guidelines adopted
27 under this section in the real property records of each county in

1 which the subdivision is located.

2 (b) A property owners' association composed of more than 14
3 lots shall adopt reasonable guidelines to establish an alternative
4 payment schedule by which an owner may make partial payments to the
5 property owners' association for delinquent regular or special
6 assessments or any other amount owed to the association without
7 accruing additional monetary penalties. For purposes of this
8 section, monetary penalties do not include reasonable costs
9 associated with administering the payment plan or interest.

10 (c) The minimum term for a payment plan offered by a
11 property owners' association is three months.

12 (d) A property owners' association may not allow a payment
13 plan for any amount that extends more than 18 months from the date
14 of the owner's request for a payment plan. The association is not
15 required to enter into a payment plan with an owner who failed to
16 honor the terms of a previous payment plan during the two years
17 following the owner's default under the previous payment plan.

18 (e) A property owners' association's failure to file as
19 required by this section the association's guidelines in the real
20 property records of each county in which the subdivision is located
21 does not prohibit a property owner from receiving an alternative
22 payment schedule by which the owner may make partial payments to the
23 property owners' association for delinquent regular or special
24 assessments or any other amount owed to the association without
25 accruing additional monetary penalties, as defined by Subsection
26 (b).

27 SECTION 8. (a) Section 5.012, Property Code, as amended by

1 this Act, applies only to a sale of property that occurs on or after
2 the effective date of this Act. For the purposes of this
3 subsection, a sale of property occurs before the effective date of
4 this Act if the executory contract binding the purchaser to
5 purchase the property is executed before that date. A sale of
6 property that occurs before the effective date of this Act is
7 governed by the law in effect immediately before that date, and that
8 law is continued in effect for that purpose.

9 (b) Section 202.006, Property Code, as amended by this Act,
10 applies to a provision in a dedicatory instrument or a restrictive
11 covenant enacted before, on, or after the effective date of this
12 Act, except that any action taken before the effective date of this
13 Act based on an unfiled dedicatory instrument is not invalidated by
14 Section 202.006, Property Code, as amended by this Act.

15 (c) Section 207.003, Property Code, as amended by this Act,
16 applies only to a request for information received by a property
17 owners' association on or after the effective date of this Act. A
18 request for information received by a property owners' association
19 before the effective date of this Act is governed by the law in
20 effect immediately before the effective date of this Act, and that
21 law is continued in effect for that purpose.

22 (d) Section 209.0062, Property Code, as added by this Act,
23 applies only to an assessment or other debt that becomes due on or
24 after the effective date of this Act. An assessment or other debt
25 that becomes due before the effective date of this Act is governed
26 by the law in effect immediately before the effective date of this
27 Act, and that law is continued in effect for that purpose.

1 SECTION 9. Not later than January 1, 2012, each property
2 owners' association shall present for recording with the county
3 clerk as prescribed by Section 202.006, Property Code, as amended
4 by this Act, each dedicatory instrument governing the association
5 that has not been previously recorded in the real property records
6 of the county.

7 SECTION 10. This Act takes effect January 1, 2012.

H.B. No. 1821

David Dewhurst

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 1821 was passed by the House on May 5, 2011, by the following vote: Yeas 145, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1821 on May 25, 2011, by the following vote: Yeas 139, Nays 4, 2 present, not voting.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 1821 was passed by the Senate, with amendments, on May 23, 2011, by the following vote: Yeas 31, Nays 0.

Ruby Shaw

Secretary of the Senate

APPROVED:

17 JUN '11

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
* 4:00 pm O'CLOCK

JUN 17 2011

Boyd Rutherford

Secretary of State